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U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

400 Seventh Street, S.W.
Washington, D.C. 20590

MAR - 3 2006

Mr. David Wight
President and CEO
Alyeska Pipeline Service Company
P.O. Box 60469
Fairbanks, Alaska 99706

03-14-06A10.03 RCV

Re: CPF No. 5-2003-5002

Dear Mr. Wight:

Enclosed is a decision on the petition for reconsideration filed in the above-referenced case. The Associate Administrator for Pipeline Safety has granted the petition regarding item 6d in the Final Order. The civil penalty is reduced by \$1,000. Payment of the remaining \$17,500 civil penalty is due immediately. The Compliance Order portion of the Final Order is amended by striking all portions related to item 6d. Please be advised that appropriate corrective action regarding the remainder of the Compliance Order and all Warning Items must be taken if such action has not already been completed. Your receipt of this decision constitutes service under 49 C.F.R. § 190.5.

Sincerely,

James Reynolds
Pipeline Compliance Registry
Office of Pipeline Safety

Enclosure

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

**DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, DC 20590**

<u>In the Matter of</u>)	
)	
Alyeska Pipeline Service Company,)	CPF No. 5-2003-5002
)	
Petitioner)	
)	

DECISION ON PETITION FOR RECONSIDERATION

On May 19, 2005, pursuant to 49 U.S.C. § 60112, the Associate Administrator for Pipeline Safety (Associate Administrator) issued a Final Order in this case finding that Petitioner had violated the pipeline safety regulations and assessing a civil penalty in the amount of \$18,500. The Final Order also ordered Petitioner to take certain actions to ensure compliance with the pipeline safety regulations. The Final Order warned Petitioner to take appropriate corrective action regarding some of Petitioner's practices for recording data and reviewing documents.

On June 15, 2005, Petitioner filed a petition for reconsideration of the Final Order.¹ In its petition, Petitioner sought reconsideration of one finding of violation in the Final Order, on the grounds that the relevant piping was covered by the "terminal facilities exception" in 49 C.F.R. § 195.1(b)(8)(ii). Petitioner also complained the delay between the filing of Petitioner's response to the Notice of Probable Violation (NOPV) and the issuance of the Final Order violated Pipeline and Hazardous Materials Safety Administration (PHMSA) regulations and Executive Order 12988.²

The Final Order found Petitioner committed six violations of the pipeline safety regulations. Petitioner seeks reconsideration of the finding that Respondent violated sections 195.571 and 195.573(a)(1), (e) due to inadequate cathodic protection of crude oil piping between West Metering and Berth 4 and between Berths 4 and 5 at the Valdez Marine Terminal (VMT) (hereinafter "violation 6d"). Petitioner also seeks a stay of the Final Order with regard to violation 6d

¹ The petition for reconsideration indicated Petitioner intended to brief the issues raised in the petition. PHMSA did not receive a brief on the petition.

² Although Petitioner "complained" about the delay, Petitioner did not state what relief, if any, it sought. Petitioner did not allege any prejudice or harm resulting from the delay.

Petitioner argues that, unless violation 6d is withdrawn, the Final Order would amend the terminal facilities exception by imposing size and pressure requirements as part of the exception. Petitioner claims the piping at issue in violation 6d is not within PHMSA's jurisdiction to regulate. Petitioner further argues that, even if the piping is within PHMSA's statutory jurisdiction, it is not within the scope of the current regulations and that PHMSA cannot now extend the scope of regulation to include this piping without notice and comment rulemaking.

Through delegations from the Secretary of Transportation, the Hazardous Liquid Pipeline Safety Act of 1979 ("HLPESA") provides the authority for PHMSA to prescribe minimum safety standards for pipeline transportation, which is "the movement of hazardous liquid by pipeline, or the storage of hazardous liquid incidental to the movement of hazardous liquid by pipeline, in or affecting interstate or foreign commerce."³ Pipeline transportation "does not include moving hazardous liquid through ... onshore production, refining, or manufacturing facilities; or storage or in-plant piping systems associated with onshore production, refining, or manufacturing facilities."⁴

Accordingly, PHMSA's jurisdiction encompasses the movement of hazardous liquids by pipeline and the storage incidental to that movement. There is no question that the terminal facilities at the Valdez Marine Terminal are "incidental" to a pipeline. The facility is connected to a pipeline and receives hazardous liquids directly from a pipeline, making it incidental to pipeline transportation. *See, e.g., Exxon v. U.S. Secretary of Transportation*, 978 F. Supp. 946, 950 (E.D. Wash. 1997). Therefore, all piping at this terminal clearly falls within the statutory definition of pipeline transportation.⁵

As noted by Petitioner, however, even if the piping is within PHMSA's statutory jurisdiction, the piping may not fall within the area traditionally regulated by PHMSA. The plain language of the terminal facilities exception, found at 49 C.F.R. § 195.1(b)(8)(ii), states that Part 195 does not apply to transportation of a hazardous liquid through facilities located on the grounds of a materials transportation terminal that are used exclusively to transfer the hazardous liquid between a non-pipeline mode and a pipeline. However, Part 195 does apply to "any device and associated piping that are necessary to control pressure in the pipeline under § 195.406(b)" that would otherwise be excepted from Part 195 under the terminal facilities exception.⁶

Several pertinent facts are undisputed. Other than the piping associated with the breakout tanks, no piping at the terminal facility is used to transport hazardous liquids out of the terminal by pipeline – all hazardous liquids leave the facility by a

³ See 49 U.S.C. § 60101(19) and (22)(A)

⁴ 49 U.S.C. § 60101(22)(B)(ii) and (iii)

⁵ The Valdez Marine Terminal facilities are not onshore production, refining, or manufacturing facilities, or storage or in-plant piping systems associated with onshore production, refining, or manufacturing facilities

⁶ 49 C.F.R. § 195.1(b)(8)(ii)

non-pipeline mode of transportation. Therefore, there is no question that the piping is on the grounds of a materials transportation terminal. It is also clear that hazardous liquids flow only from a pipeline to a non-pipeline mode of transportation. At issue is whether the outlet piping from the storage tanks is necessary to control pressure in the pipeline.⁷

The terminal facilities exception finds its basis in the HLPsA. The HLPsA provides that PHMSA does not have the authority to regulate storage facilities that are not incidental to pipeline transportation. PHMSA has declined to regulate any terminal facilities except those that are necessary to control the pressure in the pipeline. The fundamental basis of the terminal facilities exception is to exempt from regulation *storage* facilities. Facilities that are operationally part of the pipeline and that are not part of storage have never been excepted from Part 195 regulation.⁸

Petitioner argues that it does not use the piping to transport hazardous liquids directly to marine vessels, as described in the Final Order. Instead, Petitioner asserts that it only uses the piping to transfer hazardous liquids between storage tanks and non-pipeline modes of transportation. Petitioner argues that its ability to use the piping as a continuation of the mainline does not affect its exclusive use as transfer piping.

Although I believe it was not the intent of the Office of Pipeline Safety to exempt piping under circumstances such as these, the piping between West Metering and Berth 4 and between Berths 4 and 5 at the Valdez Marine Terminal (VMT) falls within the language of the terminal facilities exception. The piping is not necessary to control pressure under section 195.406(b). Therefore, the piping is not breakout tank piping subject to Part 195. Furthermore, the Deputy Associate Administrator for Pipeline Safety issued an interpretation letter dated December 27, 1995, regarding sections 195.1(b)(6) and (b)(7). Paraphrased, the letter states:

- 1) Terminal facilities include piping located on the grounds of a terminal and used to transfer hazardous liquid between a pipeline and a non-pipeline mode of transportation, not including any device and associated piping necessary to control pressure in the pipeline under section 195.406(b).
- 2) If there is no pressure control device on terminal grounds which is required by section 195.406(b) for safe operation of a jurisdictional pipeline serving the plant, the terminal facilities extend to the terminal boundary
- 3) If there is such a device on terminal grounds, Part 195 applies to the device and to transfer piping that connects the device to the jurisdictional pipeline.

In addition to the plain language of the regulation and the interpretation letter, language in the notice of proposed rulemaking proposing (NPRM) the current text of the regulation further supports Petitioner's position. The NPRM stated:

⁷ *Id*

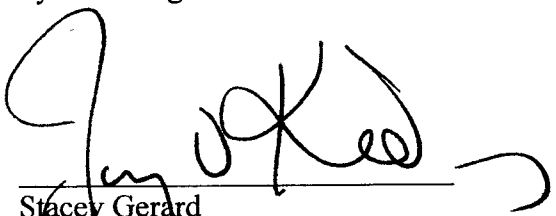
⁸ See *Exxon Corporation v U S Secretary of Transportation*, 978 F Supp 946, 953 (E D Wash 1997)

Also, because the pipeline mode of transportation is not mentioned, § 195.1(b)(7) has led some to conclude that terminal facilities used to transfer hazardous liquid between a pipeline and another mode of transportation are covered by part 195. However, this inference is incorrect, since part 195 does not apply to facilities at pipeline terminals other than breakout tanks, as defined in § 195.2, and associated piping.

The basis for violation 6d was that the piping is not transfer piping, but rather was part of the mainline because hazardous liquids could flow directly from the main pipeline, through the piping at issue, to the marine vessels. I agree that, if the piping was used in that way, the piping would be subject to Part 195. However, Petitioner states, and the OPS does not contest, that the piping is not, in fact, used in that manner. Instead, the hazardous liquids flow through storage tanks to the vessels. Therefore, the piping at issue is transfer piping between the storage tanks and the non-pipeline mode of transportation.

Relief Granted

Based on the information provided in the Petition, I find that the piping at issue in violation 6d is within the statutory jurisdiction of PHMSA but meets the terminal facilities exception and therefore is not regulated under Part 195. The civil penalty of \$1,000 for violation 6d is withdrawn; therefore, the civil penalty assessed in the Final Order is reduced to \$17,500. Furthermore, the Compliance Order is amended by removing item 6d. All other terms of the Final Order remain in effect.

for


Stacey Gerard
Associate Administrator
for Pipeline Safety

MAR - 3 2006

Date Issued